

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

THOMAS THOMPSON	§	
v.	§	CIVIL ACTION NO. 6:08cv82
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT

The Petitioner Thomas Thompson, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The petition for habeas corpus relief was dismissed on March 29, 2009. Almost one year later, on March 18, 2010, Thompson filed a motion for relief from judgment. In this motion, he complains about the final judgment, as well as a Report from the Magistrate Judge recommending that his motion for leave to take an out-of-time appeal be denied.

In his motion for relief from judgment, Thompson says that in January of 2009, he was assaulted by an officer at the LeBlanc Unit and placed in solitary confinement without his legal papers or pleadings. He was then sent to another unit without any of his legal papers. He concedes that he filed a motion for extension of time in which to object, but says that when his case was dismissed, the district court abused its discretion by barring him from appellate review of unobjected to factual findings and legal conclusions accepted by the district court. He says that he should have relief from judgment because he did not obtain his legal papers until July of 2009.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion for relief from judgment be denied. The Magistrate Judge also recommended that the Petitioner's motion for leave to proceed *in forma pauperis* be denied as moot and unnecessary, and that the Petitioner's motion for a certificate of appealability be denied. A copy of this Report was sent to the Petitioner at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 45) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Petitioner's motion for relief from judgment (docket no. 41) is hereby DENIED. It is further

ORDERED that the Petitioner's motion for leave to proceed *in forma pauperis* (docket no. 40) is DENIED as moot and unnecessary. Finally, it is

ORDERED that the Petitioner's motion for a certificate of appealability (docket no. 44) is DENIED.

So ORDERED and SIGNED this 27th day of September, 2010.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**